

OHA deciding official. Such interrogatories and requests for admission must be drawn with the purpose of defining the issues in dispute between the parties and facilitating the presentation of evidence at the hearing. Answers must be served upon the party propounding the written interrogatories or requesting the admission of facts and documents within 30 days from the date of service of such interrogatories or requests, or within such other period of time as may be agreed upon by the parties or prescribed by the OHA deciding official. A copy of the answer must be filed with the OHA deciding official. Within 10 days after written interrogatories are served upon a party, that party may serve cross-interrogatories for answer by the witness to be interrogated.

**§4.223 Objections to and limitations on production of documents, depositions, and interrogatories.**

The OHA deciding official, upon motion timely made by any party in interest, proper notice, and good cause shown, may direct that proceedings under §§4.220, 4.221, and 4.222 may be conducted only under, and in accordance with, such limitation as he or she deems necessary and appropriate as to documents, time, place, and scope. The OHA deciding official may act on his or her own motion only if undue delay, dilatory tactics, and unreasonable demands are made so as to delay the orderly progress of the proceeding or cause unacceptable hardship upon a party or witness.

**§4.224 Failure to comply with orders.**

In the event of the failure of a party to comply with a request for the production of a document under §4.220; or on the failure of a party to appear for examination under §4.221 or on the failure of a party to respond to interrogatories or requests for admissions under §4.222; or on the failure of a party to comply with an order of the OHA deciding official issued under §4.223 without, in any of such events, showing an excuse or explanation satisfactory to the OHA deciding official for such failure, the OHA deciding official may:

(a) Decide the fact or issue relating to the material requested to be produced, or the subject matter of the probable testimony, in accordance with the claims of the other party in interest or in accordance with other evidence available to the OHA deciding official; or

(b) Make such other ruling as the OHA deciding official determines just and proper.

**§4.225 Prehearing conference.**

The OHA deciding official may, upon his or her own motion or upon the request of any party in interest, call upon the parties to appear for a conference to:

(a) Simplify or clarify the issues;

(b) Obtain stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(c) Limit the number of expert or other witnesses in avoidance of excessively cumulative evidence;

(d) Effect possible agreement disposing of all or any of the issues in dispute; and

(e) Resolve such other matters as may simplify and shorten the hearing.

**HEARINGS**

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

**§4.230 Authority and duties of the OHA deciding official.**

The authority of the OHA deciding official in all hearings in estate proceedings includes, but is not limited to authority:

(a) To administer oaths and affirmations;

(b) To issue subpoenas under the provisions of 25 U.S.C. 374 upon his or her own initiative or within his or her discretion upon the request of any party in interest, to any person whose testimony he or she believes to be material to a hearing. Upon the failure or refusal of any person upon whom a subpoena has been served to appear at a hearing or to testify, the OHA deciding official may file a petition in the appropriate U.S. District Court for the

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issuance of an order requiring the appearance and testimony of the witness:

(c) To permit any party in interest to cross-examine any witness;

(d) To appoint a guardian ad litem to represent any minor or incompetent party in interest at hearings;

(e) To rule upon offers of proof and receive evidence;

(f) To take and cause depositions to be taken and to determine their scope; and

(g) To otherwise regulate the course of the hearing and the conduct of witnesses, parties in interest, and attorneys at law appearing therein.

#### § 4.231 Hearings.

(a) All testimony in Indian probate hearings must be under oath and must be taken in public except in those circumstances which in the opinion of the OHA deciding official justify all but parties in interest to be excluded from the hearing.

(b) The proceedings of hearings must be recorded verbatim.

(c) The record must include a showing of the names of all parties in interest and of attorneys who attended such hearing.

#### § 4.232 Evidence; form and admissibility.

(a) Parties in interest may offer at a hearing such relevant evidence as they deem appropriate under the generally accepted rules of evidence of the State in which the evidence is taken, subject to the OHA deciding official's supervision as to the extent and manner of presentation of such evidence.

(b) The OHA deciding official may admit letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, the weight to be attached to evidence presented in any particular form being within the discretion of the OHA deciding official, taking into consideration all the circumstances of the particular case.

(c) Stipulations of fact and stipulations of testimony that would be given by witnesses were such witnesses present, agreed upon by the parties in interest, may be used as evidence at the hearing.

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(d) The OHA deciding official may in any case require evidence in addition to that offered by the parties in interest.

#### § 4.233 Proof of wills, codicils, and revocations.

(a) *Self-proved wills.* A will executed as provided in § 4.260 may, at the time of its execution, be made self-proved, and testimony of the witnesses in the probate thereof may be made unnecessary by the affidavits of the testator and attesting witnesses, made before an officer authorized to administer oaths, such affidavits to be attached to such will and to be in form and contents substantially as follows:

State of \_\_\_\_\_ County of \_\_\_\_\_ ss. I, \_\_\_\_\_, being first duly sworn, on oath, depose and say: That I am an \_\_\_\_\_ (enrolled or unenrolled) member of the \_\_\_\_\_ Tribe of Indians in the State of \_\_\_\_\_; that on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, I requested \_\_\_\_\_ to prepare a will for me; that the attached will was prepared and I requested \_\_\_\_\_ and \_\_\_\_\_ to act as witnesses thereto; that I declared to said witnesses that said instrument was my last will and testament; that I signed said will in the presence of both witnesses and they signed the same as witnesses in my presence and in the presence of each other; that said will was read and explained to me (or read by me), after being prepared and before I signed it and it clearly and accurately expresses my wishes; and that I willingly made and executed said will as my free and voluntary act and deed for the purposes therein expressed.

#### TESTATOR/TESTATRIX

We, \_\_\_\_\_ and \_\_\_\_\_, each being first duly sworn, on oath, depose and state: That on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, \_\_\_\_\_ a member of the \_\_\_\_\_ Tribe of Indians of the State of \_\_\_\_\_, published and declared the attached instrument to be his/her last will and testament, signed the same in the presence of both of us and requested both of us to sign the same as witnesses; that we, in compliance with his/her request, signed the same as witnesses in his/her presence and in the presence of each other; that said testator/testatrix was not acting under duress, menace, fraud, or undue influence of any person, so far as we could ascertain, and in our opinion was mentally capable of disposing of all his/her estate by will.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness